

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SAMUEL LOVE,
Plaintiff,
v.
DONG NGUYEN, et al.,
Defendants.

Case No. [5:20-cv-02072-EJD](#)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 23

Plaintiff Samuel Love moves for reconsideration of the Court's June 22, 2021 order dismissing the action for failure to prosecute. Dkt. No. 23. For the following reasons, the Court DENIES the motion.

Love filed the present action on March 25, 2020 and the summons return on June 10, 2020. Dkt. Nos. 1, 12. He took no further action while the case remained pending. On June 14, 2021, the Court issued an order to show cause why this action should not be dismissed for failure to prosecute and ordered Love to file a written response by June 21, 2021. Dkt. No. 19. The Court advised Love that if he failed to file a written response by June 21 as ordered, the Court would dismiss the action with prejudice. *Id.* at 1. Plaintiff did not file a written response by the June 21 deadline. Accordingly, the Court dismissed the action on June 22, 2021. Dkt. No. 20. After the Court issued its order of dismissal, Love filed a show cause response. Dkt. No. 21. Judgment issued on June 23, 2021. Dkt. No. 22.

On June 28, 2021, Love filed the motion for reconsideration now before the Court. Dkt. No. 23. Love states that his motion is made pursuant to "Local Rule 303(c) regarding an Order Case No.: [5:20-cv-02072-EJD](#) ORDER DENYING MOT. FOR RECON.

1 entered by a Magistrate Judge.” *Id.* at 1. Notwithstanding the fact that the order of dismissal was
2 not entered by a Magistrate Judge, “Local Rule 303(c)” does not exist. The Court therefore
3 construes the motion as one brought pursuant to Civil Local Rule 7-9.

4 Love’s motion for reconsideration is procedurally improper for multiple reasons. First,
5 Civil Local Rule 7-9(a) states that “[n]o party may notice a motion for reconsideration without
6 first obtaining leave of Court to file the motion.” Love did not seek leave from the Court to file
7 his motion. Additionally, Civil Local Rule 7-9(a) states that such a request must be made
8 “[b]efore the entry of a judgment adjudicating all of the claims and the rights and liabilities of all
9 the parties in a case” Judgment has already been entered. Dkt. No. 22.

10 Even if Love had sought and received leave to file his motion for reconsideration, and even
11 if judgment had not already been entered, his motion did not demonstrate (a) that a material
12 difference in fact or law exists from that which was presented to the Court before it issued the
13 order of dismissal, (b) the emergence of new material facts or a change of law that occurred after
14 the Court dismissed the action, or (c) a manifest failure by the Court to consider material facts or
15 dispositive legal arguments which were presented to the Court before it issued its order. Civ. L.R.
16 7-9(b). Absent a showing of one of those three things, “a motion for reconsideration should not be
17 granted, absent highly unusual circumstances.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir.
18 2003) (quoting *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).
19 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and
20 conservation of judicial resources.” *Id.* (citation and internal quotation marks omitted).

21 Love’s motion regurgitates his show cause response, which consists of a long recitation of
22 email exchanges with and complaints about opposing counsel. Dkt. No. 23. But nothing in his
23 motion explains why, if defense counsel did indeed refuse to participate in the General Order 56
24 process, Love did not seek relief from the Court as General Order 56 expressly permits. General
25 Order 56 § 3 (“Requests . . . to enforce any of the requirements of this Order may be made . . . by
26 filing a Motion for Administrative Relief under Civil Local Rule 7-11.”). The fact remains that
27 Love took no action before the Court for over a year, and he did so only after it was too late.

Love provides no legal authority to support his position for reconsideration. He was on notice that a failure to file a show cause response by the June 21 deadline would result in dismissal. Dkt. No. 19. Love claims that he was unable to meet the June 21 deadline “due to technical issue[s],” Dkt. No. 23 at 4, but the Court observes that his attorneys—including the one who filed Love’s show cause response and the motion for reconsideration—were able to submit multiple filings on June 21 in other cases without any apparent issue. *See Johnson v. Lau*, No. 5:21-cv-01401-EJD, Dkt. No. 17 (N.D. Cal. June 21, 2021) (administrative motion for relief requesting order compelling defendant to comply with General Order 56, filed by attorney Prathima Price); *Whitaker v. Oak and Fort Enter. (U.S.), Inc.*, No. 5:21-cv-00068-EJD, Dkt. No. 16 (N.D. Cal. June 21, 2021) (notice of appearance); *Johnson v. Camino Grp. 3 LLC*, No. 5:21-cv-03547-EJD, Dkt. No. 11 (N.D. Cal. June 21, 2021) (summons return); *Johnson v. Truckee’s Post, LLC*, No. 5:21-cv-04696-EJD, Dkt. Nos. 1, 2, 3 (N.D. Cal. June 21, 2021) (complaint, certificate of interested entities, and proposed summons); *Johnson v. Sanna Assocs. LLC*, No. 5:21-cv-04705-EJD, Dkt. Nos. 1, 2, 3 (N.D. Cal. June 21, 2021) (same).

Accordingly, the Court finds that no basis exists for reconsidering its prior order and therefore DENIES the motion. Love’s alternative request to stay the Court’s order for 30 days “to allow Plaintiff the opportunity to bring a motion for permission to certify the order for immediate appeal pursuant to 28 U.S.C. § 1292(b),” Dkt. No. 23 at 4, is moot in view of the issued judgment.

IT IS SO ORDERED.

Dated: June 30, 2021



EDWARD J. DAVILA
United States District Judge